

STATE BOARD OF ACCOUNTS
302 West Washington Street
Room E418
INDIANAPOLIS, INDIANA 46204-2765

EXAMINATION REPORT
OF
STATE BUREAU OF MOTOR VEHICLES COMMISSION
FLEETMAX LICENSE BRANCH NUMBER 205
January 1, 2003 to December 31, 2004



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OFFICIALS

Office

Official

Term

Chairman, Bureau of Motor
Vehicles Commission

Gerald Coleman
Mary DePrez
Joel Silverman

01-06-02 to 02-29-04
03-01-04 to 01-09-05
01-10-05 to 01-11-09

Branch Manager

Richard Curry
Martin Murphy

01-01-03 to 12-31-04
01-01-05 to 12-31-05



STATE OF INDIANA

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INDEPENDENT ACCOUNTANT'S REPORT

TO: THE OFFICIALS OF THE STATE BUREAU OF MOTOR VEHICLES COMMISSION

We have examined the Schedule of Collections and Distributions of the State Bureau of Motor Vehicles Commission License Branch Number 205 (Branch) for the period of January 1, 2003 to December 31, 2004. The Branch's management is responsible for the schedule. Our responsibility is to express an opinion based on our examination.

Our examination was conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants and, accordingly, included examining, on a test basis, evidence supporting the Schedule of Collections and Distributions and performing such other procedures as we considered necessary in the circumstances. We believe that our examination provides a reasonable basis for our opinion.

In our opinion, the schedule referred to above presents fairly, in all material respects, the cash transactions of the Branch for the years ended December 31, 2003 and 2004, based on the criteria set forth in the uniform compliance guidelines established by the Indiana State Board of Accounts.

STATE BOARD OF ACCOUNTS

June 15, 2005

STATE BUREAU OF MOTOR VEHICLES COMMISSION
FLEETMAX LICENSE BRANCH NUMBER 205
SCHEDULE OF COLLECTIONS AND DISTRIBUTIONS
January 1, 2003 to December 31, 2003

	<u>Amount</u>
Collections:	
Titles	<u>\$ 1,607,026</u>
Distributions:	
State fees	\$ 431,195
Commission fees	<u>1,175,831</u>
Total	<u>\$ 1,607,026</u>

The accompanying notes are an integral part of the schedule.

STATE BUREAU OF MOTOR VEHICLES COMMISSION
FLEETMAX LICENSE BRANCH NUMBER 205
SCHEDULE OF COLLECTIONS AND DISTRIBUTIONS
January 1, 2004 to December 31, 2004

	<u>Amount</u>
Collections:	
Titles	<u>\$ 1,222,134</u>
Distributions:	
State fees	\$ 327,574
Commission fees	<u>894,560</u>
Total	<u>\$ 1,222,134</u>

The accompanying notes are an integral part of the schedule.

STATE BUREAU OF MOTOR VEHICLES COMMISSION
FLEETMAX LICENSE BRANCH NUMBER 205
NOTES TO SCHEDULE OF COLLECTIONS AND DISTRIBUTIONS

Note 1. Introduction

The Motor Vehicles Commission was created to manage the motor vehicle license branches. The Bureau of Motor Vehicles is a separate state agency which provides support services to the Commission controlled license branches. The license branches collect fees which fund the Motor Vehicles Commission. The license branches collect and forward county taxes (excise tax, wheel tax, and surtax) and state fees. The Commission has one contractual branch that is administered by an individual contractor according to Bureau policies. The Commission has developed a mobile license branch to serve the need of CDL license issuance and other special needs as they arise.

Note 2. Collections and Distributions

Each branch collects fees and taxes when vehicle and watercraft registrations, titles and drivers licenses are sold. Fees are uniform throughout the state. Fleetmax License Branch Number 205 processes only title transactions.

The total daily collections are deposited to a single bank account. From this account the collections are distributed to separate bank accounts which are not controlled by the license branch and belong to the state, county and Bureau of Motor Vehicles Commission.

Note 3. Banking System

The Bureau of Motor Vehicles Commission has entered into an agreement with Bank One for a cash concentration system. The system utilizes a series of individual noninterest bearing accounts (clearing accounts) from which all fees and taxes are transferred.

STATE BUREAU OF MOTOR VEHICLES COMMISSION
FLEETMAX LICENSE BRANCH NUMBER 205
STATISTICAL INFORMATION
January 1, 2003 to December 31, 2003

<u>Transactions Processed</u>	<u>Quantity</u>
Titles:	
Vehicles	<u>40,268</u>

STATE BUREAU OF MOTOR VEHICLES COMMISSION
FLEETMAX LICENSE BRANCH NUMBER 205
STATISTICAL INFORMATION
January 1, 2004 to December 31, 2004

<u>Transactions Processed</u>	<u>Quantity</u>
Titles:	
Vehicles	<u>30,528</u>

STATE BUREAU OF MOTOR VEHICLES COMMISSION
FLEETMAX LICENSE BRANCH NUMBER 205
EXAMINATION RESULTS AND COMMENTS

CONTRACT REQUIREMENT DEFICIENCIES

The service contract executed between the Bureau of Motor Vehicles Commission (BMVC) and Family Management Corporation, doing business as Fleetmax (Contractor), defines the various duties of the Contractor in addition to the policies which apply, as outlined in the Branch Operations Policies and Procedures Manual.

Police Inspections Contract Requirements

While at the Fleetmax site, we randomly selected 54 title application files and reviewed each to verify that information required by the contract was being maintained. One of those requirements is to insure a "proper inspection of each motor vehicle by a law enforcement officer, approved and designated by the Indiana State Police (signed State Form 39530, R4/12-96)."

Two irregularities with the forms presented for audit were noted:

- State form 39530 was only partially completed in each of the files.
- Officer signatures appeared to be "canned" or on a template with the signature already affixed. Only vehicle and date information was different on each form.

The irregularities above prompted an inquiry of the State Police officer whose name we located in an early document as approving this inspection process. The discussion with the current State Police Major over this area revealed that no such approval was granted. In fact, the officer stated the Indiana State Police does not have the authority to authorize this inspection.

The Major stated he had spoken some time ago with one of the Canadian officers whose signature and phone number is listed on the inspection forms and was told the inspections were conducted by looking at pictures only. State form 39530 specifically requires a physical inspection be made and attested by the officer.

To further verify the validity of the documents we were given for audit, we submitted a list to the titles department of the BMV of the same 54 title applications and asked them to locate each in their archives and make a copy for our use. A comparison of the information from the two sources should have shown them to be the same, but instead, 42 of the 54 documents were signed by different officers. Copies of the inspection forms on file at the BMV identify an officer with the Markleville, Indiana Police Department as the officer signing the inspection forms during a large portion of 2003, yet that officer's signature was not on any forms in the Fleetmax files.

Two other differences were found between the 2 sets of 54 records. The date of inspection did not match on one of the documents, and on another, the vehicle identification number was different by one digit.

The results of our audit of this portion of the contract indicate Fleetmax is not in compliance with this contract requirement and that other irregularities might exist.

STATE BUREAU OF MOTOR VEHICLES COMMISSION
FLEETMAX LICENSE BRANCH NUMBER 205
EXAMINATION RESULTS AND COMMENTS
(Continued)

Form ST-108E'S

On 14 of the 54 randomly selected title applications tested for 2003 and 2004, federal identification numbers on the title applications did not agree with the federal identification numbers on the ST-108E's "Certificate of Gross Retail or Use Tax Exemption for the Purchase of a Motor Vehicle or Watercraft (State Form 48841). In each case, the title applicant was "Fleetmax as Trustee for FMCC." The federal identification number listed on the title application was that of Ford Motor Credit Company and the federal identification number listed on the ST-108E was that of Family Management Company. In two transactions, dated October 11, 2004, and December 16, 2004, the federal identification of Family Management Company was used on both the title application and the ST-108E.

A comparison of the ST-108E's contained in the Fleetmax files to the ST-108E's submitted and obtained from the BMV revealed that in five of five ST-108E's reviewed, differences between the forms were noted. Differences were noted in the signatures of purchasers, dates, federal identification numbers and exemptions claimed in all five transactions reviewed. In addition, the ST-108E's in the Fleetmax files show a form approval date of August 2004. The transaction dates for these forms were prior to August 2004 in all five instances, which indicates the file copy was prepared sometime after August 2004 for the form to have been available for use.

Required Photographs

Fleetmax is to provide the BMVC with required documentation for each title transaction. Documentation required for imported motor vehicles includes keeping on file in its records for ten years actual photographs of the odometer, manufacturer's sticker, registered import sticker, VIN, and full body photos of each vehicle.

In 16 of 54 title transactions tested in 2003 and 2004, one or more of these required photographs was missing from the contractor's files.

Third-party dealer owned vehicles

The Fleetmax contract states that the contractor shall not process speed title applications for imported vehicles for which the contractor is not the registered importer of record, *nor shall the contractor process speed title applications for third-party dealer-owned imported vehicles.* The contract states that the contractor's failure to comply with this provision would be immediate grounds for the termination of the contract.

On at least one transaction in our test of title applications, we noted that the contractor processed a speed title for a third-party dealer owned imported vehicle. Documentation in the files indicates that the vehicle owner was US Fleet, and Fleetmax was the registered importer on a vehicle with an import date of 9/24/03. On September 26, 2003, a "Reassignment of a Vehicle By A Registered Dealer" (State Form 20070) was completed, which reassigned the vehicle from US Fleet to Fleetmax. The title application states that the applicant's name is "Fleetmax USF."

The contract also states that the "Contractor shall process speed title applications only for those untitled motor vehicles that Contractor imports for resale from Canada, as the Registered Importer and Owner or Trustee of record, including motor vehicles imported from Canada by Contractor on behalf of Daimler-Chrysler Corporation of Canada, Ford Motor Credit Company, and General Motors Acceptance Corporation, and said imported vehicles shall be titled in the Contractor's name (i.e. 'Fleetmax as Trustee for FMCC' or 'Fleetmax as Trustee for GMAC')."

STATE BUREAU OF MOTOR VEHICLES COMMISSION
FLEETMAX LICENSE BRANCH NUMBER 205
EXAMINATION RESULTS AND COMMENTS
(Continued)

TRANSFER OF FUNDS

In 2003, 244 of 252 invoices processed by the branch during the year were not transferred in accordance with the transfer schedule developed by the Bureau of Motor Vehicles. In 2004, 13 of 14 invoices tested were not transferred in accordance with the transfer schedule developed by the Bureau of Motor Vehicles.

All transfers must be made in accordance with the Bureau's prescribed transfer schedule. (Branch Operations Policies and Procedures Manual, Journal Chapter)

VOIDED DOCUMENTS

Of the 13 voided title transactions selected for testing, three applications were not properly defaced and seven did not note the reason for the "void." Additionally, the original (white and yellow copies) of the voided title applications tested were not retained for audit.

"Void" should be written across the face of the documents. The reason for the "void" and the transaction identification numbers of the reentered transactions should be recorded here as well. (Branch Operations Policies and Procedures Manual, Void Procedures Chapter)

APPLICATION FOR CERTIFICATE OF TITLE

The branch does not use "Application for Certificate of Title" (State Form 205) in the manner for which it was originally prescribed or approved; specifically, the branch copies of the title applications did not contain applicant signatures or dates.

Officials and employees are required to use State Board of Accounts prescribed or approved forms in the manner prescribed or approved. (Accounting and Uniform Compliance Guidelines Manual for State Agencies, Page 15:3)

STATE BUREAU OF MOTOR VEHICLES COMMISSION
FLEETMAX LICENSE BRANCH NUMBER 205
EXIT CONFERENCE

The contents of this report were discussed on December 7, 2005 with Martin Murphy, Branch Manager; and Judith Overturf, General Counsel. The official response has been made a part of this report and may be found on pages 13 through 19.

BARNES & THORNBURG LLP

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December 16, 2005

***Via Facsimile and
Certified Mail; Return Receipt Requested***

Mr. Bruce Hartman
State Board of Accounts
302 West Washington Street, Room E 418
Indianapolis, IN 46204-2738

Re: OFFICIAL RESPONSE
FleetMax - License Branch #205

Dear Mr. Hartman:

The enclosed is the Official Response of FleetMax - License Branch #205 to the draft State Bureau of Motor Vehicles Commission Examination Results and Comments discussed with representatives of our client on December 7, 2005.

If you have any questions, please do not hesitate to contact me. Thank you for time and consideration of the enclosed Official Response.

Very truly yours,



Mark D. Stuaan

MDS/jlp
Enclosure

cc: Judith Overturf, General Counsel - FleetMax (w/encl.)
Joseph Chapelle, Esq. (w/encl.)

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FLEETMAX LICENSE BRANCH NUMBER 205's OFFICIAL RESPONSE TO DRAFT OF STATE BOARD OF ACCOUNTS EXAMINATION RESULTS AND COMMENTS

1. Police Inspections Contract Requirement

Branch 205 was established as a pilot program pursuant to Indiana statute on April 26, 1999 as a partial service license branch, with the unique purpose of titling only for motor vehicles imported by FleetMax from Canada under NAFTA on behalf of the Big 3 U.S. automobile manufacturers, which also assemble cars in Canada. The pilot program, which was converted to a bid contract in 2003, evolved over time under four different BMV administrations in requirements and procedures, as a mutual learning process which its name denotes. One aspect of the pilot program and the contracts that has involved the most changes in procedure over the years has been the police inspection requirement.

As is the case with many BMV regulations, the requirement of a visual matching of the vehicle VIN plate with the title application is designed to protect the individual consumer, and was promulgated decades ago when both the technology and industry operations were much more primitive. Arguably, today a police inspection to match the vehicle VIN with the title application does not serve as the same type of protection it once did.

The three greatest concerns involving imported vehicles are the possibilities that a consumer could purchase a cloned or stolen vehicle or a vehicle subject to a recorded lien in the country of origin. Inspection of VIN plates adds little, if anything, to protect against these concerns. Clearly, the Big 3 manufacturers, which own the vehicles imported by FleetMax on both sides of the border in the importation process, have no motivation to export/import any vehicle with any problems in the title of the vehicles. In fact, in the very few instances when FleetMax has discovered any irregularity in a vehicle and notified the manufacturer, the manufacturer has pulled the vehicle out of the program. In addition, FleetMax has for a number of years, ever since the technology became available, run a computerized Autocheck on any Canadian car imported for other than a Big 3 manufacturer, which would reflect any problem with the vehicle's history in Canada.

During the period of time when Gary A. Gibson was the Commissioner of the BMV, Richard Curry, the Chief Operating Officer of FleetMax and the Manager of Branch 205, was given authority by Jeff Byrd to sign the police inspection form after reviewing the importation file with the required NHTSA

pictures of the vehicles, and the title application. Those photographs included a picture of the VIN plate. During the Gerald B. Coleman administration, in cooperation with FleetMax the BMV modified the police inspection form by deleting the requirement that the police officer conduct an actual "physical" inspection of imported vehicles. For a time, a police officer from Markleville, Indiana, along with other officers as needed, reviewed files and pictures of the vehicles, as well as title applications as part of the inspection process. When the first contract was awarded to FleetMax in September 2003 (effective retroactively to July 1, 2003), FleetMax was required to utilize Canadian police officers to perform physical inspections of the vehicles. Given the number of imported vehicles it became apparent that physical inspection of all vehicles was impractical. BMV Commissioners Coleman and Mary De Prez, who succeeded him, were well aware of the fact that physical inspection of every car was impractical, and that the Canadian police were not physically inspecting every car. Thus, the officers had available electronic files and access to the vehicles for physical inspections or "spot check" inspections as practical, if the officers were unable to physically inspect all vehicles.

The officers provided FleetMax with signed inspection affidavits and FleetMax personnel matched electronically available vehicle information with the cars being imported from various locations in Canada. FleetMax personnel then completed the signed inspection affidavits and provided those documents to BMV as part of the title package.

The draft audit report provided to FleetMax on December 7, 2005, mentions two irregularities in connection with the police inspection forms:

- 1) State Form 39530 was only partially completed in each of the files; and
- 2) Officer signatures appeared to be "canned" or on a template with the officers' signatures already affixed (noting that only the specific vehicle information and date was different on each form).

With respect to the first noted irregularity, FleetMax responds by noting that it has corrected all issues regarding partially completed forms by ensuring, with additional quality controls, that all State Forms 39530 are properly completed. At the present, law enforcement personnel are performing physical inspections of all VINs on imported vehicles.

In response to the second noted irregularity, FleetMax responds by noting, as discussed below, that the appearance of "canned" signatures does not mean that the integrity of the titling system was compromised. In other words, rogue (cloned or stolen) vehicles did not receive Indiana titles.

In connection with discrepancies in the dates in various documents, FleetMax notes that it has not retained copies in its files of the documents forwarded to BMV. Retention of these documents was not a contractual requirement.

Pursuant to NHTSA regulations, FleetMax must retain physical files on each vehicle it imports for ten years. Obviously, this presents a tremendous paper storage issue for FleetMax. Further, it is our understanding that BMV makes microfilm copies of all documents it receives from FleetMax. That is why from the inception of the partial service license branch pilot project, FleetMax's procedure as established by BMV was *not* to retain copies of all State documents submitted to BMV, but that if needed such documents could be retrieved from BMV microfilm. Some NHTSA documents required by the contracts unique to FleetMax were, at the direction of Gary Humphries at BMV, retained only in FleetMax files with the guarantee that BMV had access to the documents kept by FleetMax.

It is our understanding that during the audit visit in May 2005 the auditor mentioned to FleetMax's former Compliance Officer that FleetMax should be keeping file copies of all forms submitted to BMV. FleetMax had not been keeping file copies of the police inspection forms and Forms ST-108E.

With the request for files by the auditor in May, FleetMax determined that many of the odometer statements had not yet been put in their respective R/I folders. Rather than search through hundreds of forms for dozens of files - the Compliance Officer decided that it would be faster and easier to generate a duplicate odometer statement via Fleetmax's internal system that contained the required vehicle information. While the title section generated a duplicate odometer statement for each requested file, it was just as easy to also generate a duplicate police inspection form and ST-108E. All three of those forms had been created at the same time in the normal course of preparing the title application package. The auditor mentioned that he thought copies of all documents should be kept on file at FleetMax, and the former FleetMax Compliance Officer believed that the re-printing of the forms was the most efficient and expeditious way to comply with the auditor's request.

In an effort to cooperate with the State Audit, FleetMax provided copies of various documents to the auditors. Unfortunately, as noted above, it turns out that some of the documents sent to BMV had been electronically re-printed by the former Compliance Officer of FleetMax. The re-printing of the documents unfortunately has raised more questions than it answered. FleetMax wants to assure the State Board of Accounts that the re-printed documents were not provided in an effort to deceive the auditors. The documents were provided in an effort to demonstrate and reflect the documentation that goes into verifying vehicle VINs. It appears that the re-printing of the documents produced records that did not perfectly match documents previously submitted to BMV.

FleetMax management learned in October 2005 that some of its personnel had been using photocopies of previously signed police inspection forms as part of the title packages sent to BMV. Photocopies of the forms were used for one reason and one reason only. Given the number of cars being imported, and the impracticality of physically inspecting each vehicle, as well as the fact that the vehicles and/or related documentation had already been reviewed by NHTSA and US Customs and Border Protection, BMV had agreed that it was not necessary for the Canadian police to physically inspect each vehicle.

FleetMax assures the State Board of Accounts that it has corrected this situation and all vehicles now receive a physical VIN inspection by a law enforcement officer.

We cannot stress strongly enough the fact that at no time did FleetMax use photocopies of the inspection forms in an effort to deceive BMV, or in derogation of FleetMax's obligations under its contracts. FleetMax regrets that this has resulted in questions or concerns on the part of the auditors. However, it should not be overlooked that the practices and procedures at FleetMax have not resulted in a single incident of a cloned or stolen vehicle being imported by FleetMax. Similarly, we are unaware of a single incident where a vehicle with a recorded lien has been imported.

With respect to the specific instance we discussed on December 7 concerning a VIN with one digit difference, it appears that that was the result of human error; an unavoidable phenomenon of life.

2. State Form 108Es

On May 11, 2004, pursuant to a request from the Indiana BMV, FleetMax submitted a technical advice request to Bettie Hayes of the Indiana Department of

Revenue to elicit response in writing confirming her verbal response to the correct procedure for completing State Form 108E as part of the titling process. At her instruction, FleetMax was to utilize its own name and information including its own EI#, as the party entitled to the State tax exemption as the Registered Importer, and to always check Box #9. As Trustee for Ford and GM and because Chrysler vehicles are imported as conforming to U.S. National Highway Traffic and Safety Standards, the legal requirement would be to utilize each manufacturer's own EI# on the title application. It was very recently brought to the attention of FleetMax by BMV that several of these numbers had changed based on manufacturer reorganizations which were unknown by FleetMax, and have now been corrected. Again, these forms were not retained by FleetMax, and date discrepancies are due to re-printing the documents for the State Board of Accounts auditors.

3. Required Photographs

As with other procedures with BMV, the photograph requirements evolved over the years during the pilot program. The photographs are required pursuant to NHTSA regulations, but the number of required photographs has actually been reduced since the proposed regulations, which are now final, were issued. Further, photography technology has progressed from 35mm film to digital photography. Film which was originally sent next day delivery to be developed is now electronically transmitted. BMV has added additional full body photo requirements. However, photographs still have to be hand filed and are occasionally pulled for document review for various purposes.

While FleetMax does not intend this to be an excuse for photographs not having been in every file reviewed, had such deficiencies in the files been brought to the attention of FleetMax during the audit, FleetMax is confident that missing photographs most likely could have been located in most, if not all of the cases where photographs were noted as missing.

4. Third Party dealer owned vehicles

Pursuant to NHTSA regulations and advice, imported vehicles may be titled in the name of the Registered Importer only, prior to NHTSA issuing the bond release letter, which release allows the imported vehicle to be placed into the stream of commerce in the United States and on the roads and highways as well as into the hands of American consumers. However, after the bond release letter is issued, the vehicle can be titled at will. As of July 1, 2003, the contract between BMV and FleetMax permitted FleetMax to process titles through its partial service license branch for other Indiana dealers. The fact that FleetMax processed a title for U.S.

Fleet by reassigning a vehicle titled in its own name on September 24, 2003 which was sold to U.S. Fleet, another Indiana dealer, is in conformance with the contract. After the bond release letter was received, the purchasing Indiana dealer could contract with FleetMax to process the title, which it did. The fact that FleetMax designated the contemplated sale of a vehicle to U.S. Fleet, with a designation on the title after FleetMax's name, was ill advised and has not been done with any regularity and will not happen in the future.

5. Transfer of Funds

All current and future transfers of funds are and will be accomplished in accordance with the BMV's prescribed transfer schedule.

6. Voided Documents

All voided documents are and will be marked and notated in accordance with the BMV's Branch Operations Policies and Procedures Manual, Void Procedures Chapter.

7. Application for Certificate of Title.

All Applications for Certificates of Title currently are and will be signed and dated in the manner prescribed or approved by the BMV, including separation of duties, and copies of all BMV forms submitted will be maintained in hard form by FleetMax.

Date: Dec. 16, 2005

Respectfully submitted,



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Attorneys for FleetMax